



State of Utah

Department of
Environmental Quality

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DIVISION OF AIR QUALITY
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DAQ-070-05

MEMORANDUM

TO: Air Quality Board

THROUGH: Richard W. Sprott, Executive Secretary

FROM: Mat Carlile, Environmental Scientist

DATE: October 18, 2005

SUBJECT: Five-Year Reviews: R307-170 CEM.

Background

All state agencies are required by the Utah Administrative Rulemaking Act (Title 63, Chapter 46a) to review each of their rules at least every fifth year. Because the statute defines "agency" as the state board or other entity that is authorized by statute to make rules, the responsibility to complete the review falls to the Air Quality Board.

At the end of the review, the agency must file a notice with the Division of Administrative Rules indicating its intent to continue, amend, or repeal the rule. To continue the rule, the agency must address the requirements in 63-46a-9(3)(a); these requirements are listed on the forms attached¹. If the agency does not file the form on time, the rule automatically expires, as provided in 63-46a-9(8). Nothing in the review process makes any change in the rule text; if the agency wishes to amend or repeal the rule, a separate action is required under the regular rulemaking procedures (public notice, public comment, and final Board adoption).

¹ The five-year review must include all written comments received since the last review, and the interpretation of the Legislature's Administrative Rules Review Committee is that this includes all comments received during any amendment process, even though the Board has already considered all of those comments and responses. The program used by the Division of Administrative Rules to process agency submittals cannot accept any formatting characters; including tabs or hard returns; therefore, capitalizing titles and subjects is the only acceptable method to indicate separations.

R307-170 Continuous Emission Monitoring Program 5-year review is currently due. R307-170 establishes consistent requirements for all sources required to install a continuous monitoring system (CMS) and for sources that opt into the continuous emissions monitoring program. In addition, R307-170 is a federally required component of Utah's state implementation plan, and cannot be deleted without EPA approval.

Concurrently, some requirements of R307-170 conflict with the current version of 40 CFR Part 75, CEM provisions of the federal Acid Rain program, DAQ staff drafted revisions to R307-170, these changes were proposed for public comment (DAR #28226) from October 1, 2005 to October 31, 2005, no oral or written comments were received. The Air Quality Board is scheduled to consider this proposal for final adoption at the December 2005 Board meeting.

Staff Recommendation: Staff recommends that the Board continue the rule.